

EXHIBIT J

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF VIRGINIA
3 Norfolk Division
4

5 CSX TRANSPORTATION, INC,
6 individually and on behalf of
7 NORFOLK & PORTSMOUTH BELT LINE
8 RAILROAD COMPANY,

9 Plaintiff,

10 vs.

Case No. 2:18-CV-530

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12 NORFOLK SOUTHERN RAILWAY COMPANY,
13 NORFOLK & PORTSMOUTH BELT LINE
14 RAILROAD COMPANY, JERRY HALL,
15 THOMAS HURLBUT, PHILIP MERILLI
16 and CANNON MOSS,

17 Defendants.
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25 Job No. CS4358762

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Q. Paragraph 3 of your declaration you say: Drayage can
reliably handle only 200 containers per day to and
from NIT and no more than about 300 containers could

1 be drayed in and out of NIT in a day to handle a
2 surge.

3 Did I read that correctly?

4 A. Yes.

5 Q. What is the basis for the statements in paragraph 3?

6 A. From my knowledge while I was there, you had --
7 basically your trip was an hour roundtrip based on the
8 ports gate availability, having to turn power back and
9 forth, availability of drivers. That's where that
10 came from.

11 Q. When you say power back and forth, what do you mean?

12 A. Trucks and drivers.

13 Q. Okay.

14 A. Because the ports only keep certain hours. They're
15 not open 24/7. You can take railcars in and out 24/7.

16 Q. You said --

17 (Reporter interrupted the record at
18 10:46 a.m.)

19 BY MS. REINHART:

20 Q. You said earlier you'd made only one visit to the NIT
21 terminal?

22 A. Yes. It was at night.

23 Q. It was at night?

24 A. Uh-huh. It was, like, late evening, night.

25 Q. What was the purpose for your visit?

1 A. Went over there just to kind of -- they were doing
2 some renovations to the terminal. We went over there,
3 I think -- I don't know if Giardot was in town that
4 night or not, but went over -- went up in the tower.

5 Q. So that number 200 containers, that is based solely on
6 your experience when you were terminal manager in
7 Virginia?

8 A. Yes.

9 Q. How did you come up with that number?

10 A. Off the top of my head, basically just looking at
11 operation, what I've done before, what we -- what we
12 can usually handle to get in and out, so --

13 Q. Are there -- are there data that support that 200
14 container number --

15 A. There's probably --

16 Q. -- to your knowledge?

17 A. Probably no data. Just my gut.

18 Q. Is there a way that you tracked the number of
19 containers that were moved per day?

20 A. I mean, it could show up on a consist, the trains in
21 and out. I'm just -- what I -- what I thought from my
22 knowledge and my experience. No data to back it up
23 per se, but just my experience.

24 Q. Were you asked to look for data to support that 200
25 container number?

1 A. No.

2 Q. Were you asked to look for any other kinds of business
3 records to --

4 A. No.

5 Q. -- support that 200 container number?

6 A. I was just asked to -- here, it is. Here's the
7 information.

8 Q. Okay. When you say in that drayage can reliably
9 handle, what do you -- what do you mean by reliably
10 handle?

11 A. Actually get it done. You could have an accident in
12 the tunnel. You could have an accident on the main
13 road that comes in and out of NIT, which could happen.
14 Something in the tunnel happens, you have to go to the
15 other. So there was a little -- a few stumbling
16 blocks. Because typically they would take the midtown
17 versus the downtown because it was closest.

18 Q. Were there other factors that affected whether
19 containers would reliably be drayed?

20 A. Gate hours, the availability of drivers, chassis,
21 backups at NIT on the gate.

22 Q. Can you recall how many times you had a problem with
23 availability of drivers?

24 A. Not off the top of my head, but if they're not
25 available -- I mean, sometimes they would get stuck in

1 tunnels or there would be traffic, so -- sometimes
2 there's a slow turn. But no. To answer your
3 question, no.

4 Q. Was it a handful of times?

5 A. Don't recall.

6 Q. And then you said -- you said the drayage could handle
7 no more than about 300 containers in and out of NIT in
8 a day to handle a surge. What did you mean by a
9 surge?

10 A. A surge would be, like, an extra ship shows up, extra
11 volume of what's normally there. After the pandemic
12 hit, it was slow and then you got a big surge of
13 traffic in and out of the ports.

14 Q. How frequently was there a surge?

15 A. There was no frequency to it. It could just happen.
16 Stuff could get delayed. There could be ships holding
17 out. There could be weather delays. There was no
18 rhyme or reason. It would happen occasionally.

19 Q. So you were a terminal manager for a little over a
20 year. Ballpark, how many times would you say there
21 was a surge?

22 A. Probably had three to four ballpark.

23 Q. How would you learn about a surge?

24 A. The port would let us -- at some point the port would
25 start piling up boxes and let us know that we have a

1 thousand on dock that need to go, imports that need to
2 go due to ships getting delayed.

3 Q. In your experience has CSX drayed more than 200
4 containers in one day?

5 A. While I was there, there were probably a few times
6 where we drayed about 250, but I don't have the exact
7 numbers.

8 Q. Can you recall CSX draying more than 300 --

9 A. No.

10 Q. -- in one day?

11 And you testified that you ballpark or
12 recalled three or four surges over the year when you
13 were terminal manager; is that correct?

14 A. Yes, it is.

15 Q. Can you recall how many times CSX had a need to dray
16 more than 200 containers in a day but was unable to do
17 it?

18 A. CSXT did not dray them. That would have been the
19 ports, but no.

20 Q. Do you know whether before you became terminal manager
21 of containers that what could reliably be drayed was
22 different from your estimate?

23 MS. PETERSON: Objection.

24 THE WITNESS: No knowledge.

25 BY MS. REINHART:

1 Q. Did you investigate that question at all?

2 A. No.

3 Q. Where CSX drays at other ports, do you know how many
4 containers per day can reliably be drayed?

5 MS. PETERSON: Objection. Lack of
6 foundation.

7 THE WITNESS: Again, I have no knowledge.

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Q. Do you know how many interchange lanes NIT has for truck traffic coming in and out?

A. At the port I do -- I don't know how many lanes they have at the port in and out. I don't know what their out gates look like or their in gates.

Q. You only went there once, if I recall your testimony; is that correct?

A. Like, once at night. So I don't know what their operations look like as far as their dray operations.